



DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-809]

Certain Hot-Rolled Steel Flat Products from Australia: Notice of Court Decision Not in Harmony with the Results of Antidumping Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 30, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *BlueScope Steel LTD. v. United States*, Court No. 19-00057, sustaining the U.S. Department of Commerce's (Commerce) remand results pertaining to the administrative review of the antidumping duty (AD) order on certain hot-rolled steel flat products (hot-rolled steel) from Australia covering the period March 22, 2016, through September 30, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to BlueScope Steel Ltd. (BSL) and its affiliate BlueScope Steel (AIS) Pty (collectively, BlueScope).

DATES: Applicable September 9, 2022.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6274.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 2019, Commerce published its *Final Results* in the 2016-2017 AD administrative review of hot-rolled steel from Australia.¹ Commerce applied facts otherwise available, with an adverse inference, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act) to BlueScope because it provided deficient responses and failed to provide information in the manner and form requested, thereby significantly impeding the administrative review and failed to cooperate to the best of its ability with Commerce's request for information. BlueScope appealed Commerce's *Final Results*. On November 30, 2021, the CIT remanded the *Final Results* to Commerce to reexamine the record in this case, as well as the use of facts available with respect to BlueScope.²

In its remand redetermination, issued in April 2022, Commerce reevaluated the information on the record and issued a supplemental questionnaire to BlueScope identifying the deficiencies in its previous responses. Based on BlueScope's supplemental response, we recalculated the period of review weighted-average dumping margin for BlueScope consistent with record evidence.³ The CIT sustained Commerce's *Final Redetermination*.⁴

Timken Notice

In its decision in *Timken*,⁵ as clarified by *Diamond Sawblades*,⁶ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of a court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's August 30, 2022, judgment constitutes a final decision of the CIT that is not in

¹ See *Certain Hot-Rolled Steel Flat Products from Australia: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 18241 (April 30, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum.

² See *BlueScope Steel Ltd. v. United States*, 548 F. Supp. 3d 1351 at 1369 (CIT 2021).

³ See *Final Results of Redetermination Pursuant to Court Remand, BlueScope Steel LTD. v. United States*, Court No. 19-00057, Slip Op. 21-160, dated April 12, 2022, available at <https://access.trade.gov/Resources/remands/21-160.pdf> (*Final Redetermination*).

⁴ See *BlueScope Steel Ltd. v. United States*, Court No. 19-00057, Slip Op. 22-102 (CIT August 30, 2022).

⁵ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁶ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to BlueScope as follows:

Exporter/Producer	Weighted-Average Dumping Margin (Percent)
BlueScope Steel (AIS) Pty Ltd, BlueScope Steel Ltd., and BlueScope Steel Distribution Pty Ltd.	4.95

Cash Deposit Requirements

Because BlueScope has a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by a CIT order from liquidating entries that: were (a) produced and/or exported by BlueScope Steel Ltd. and BlueScope Steel (AIS) Pty Ltd.; (b) subject to the *Final Results*; and (c) entered, or withdrawn from warehouse for consumption, on or after March 22, 2016, up to and including September 30, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by BSL and BlueScope Steel (AIS) Pty Ltd. in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an import-specific *ad valorem*

assessment rate is zero or *de minimis*,⁷ we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 13, 2022.

Lisa W. Wang,
Assistant Secretary

for Enforcement and Compliance.

[FR Doc. 2022-20208 Filed: 9/16/2022 8:45 am; Publication Date: 9/19/2022]

⁷ See 19 CFR 351.106(c)(2).